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1 medical records submitted to the Appeals Council following the ALJ's
2 decision establish severe physical impairments that were not
3 considered by the ALJ at step two, and the ALJ erred in her
4 consideration of the medical opinions and Plaintiff's symptom
5 testimony. In contrast, the Commissioner asks the Court to affirm the
6 denial of benefits. Plaintiff establishes error; this matter is remanded
7 for further proceedings.

8 **I. Background**

9 On February 28, 2020, Plaintiff applied for benefits, claiming
10 disability beginning May 1, 2012, at the age of 33 years old.³ After the
11 agency denied benefits, ALJ Cecilia LaCara held telephone hearings in
12 November 2022 and February 2023, at which Plaintiff appeared and

13
14 ³ AR 3427–37. Plaintiff was previously awarded disability benefits in
15 2010, associated with his impairments of major depressive disorder,
16 post-traumatic stress disorder, generalized anxiety disorder with panic
17 attacks and agoraphobia, bipolar disorder, and chronic pain, meeting
18 Listing 12.04. AR 3153. These benefits were terminated in August
19 2014. AR 2422.

1 testified without counsel.⁴ During the November 2022 hearing,
2 Plaintiff testified that he had been taking his issued prescriptions but
3 had not seen a treating provider for six months.⁵ He reported that he
4 had been to jail for driving without an operator's license, had a high
5 school degree, and had previously worked on farm and garden
6 equipment.⁶ He stated that he later worked as a service manager for
7 one of the farm-equipment companies, but after seven months, he had
8 to quit that position because he felt that he could not perform the non-
9 exertional requirements of the position.⁷

10 During the February 2023 hearing, Plaintiff reported that he was
11 single, lived in an apartment by himself, did not have a current driver's
12 license due to unpaid court fines, and his mom takes him if he needs to
13 go to the store or appointments.⁸ He testified that he had been to his

14
15 ⁴ AR 3106–46.

16 ⁵ AR 3112–14.

17 ⁶ AR 3117–18, 3120–21.

18 ⁷ AR 3119.

19 ⁸ AR 3129–31.

1 medical provider in November 2022 to receive his prescriptions,
2 including fluoxetine, trazodone, and ativan, and he reported that his
3 medications help manage his anxiety symptoms “a little bit” but not his
4 depression symptoms.⁹ He stated that he started seeing a counselor
5 and that he believes the medication and counseling work together to
6 help reduce some anxiety symptoms.¹⁰ He testified that he gets anxiety
7 being around other people and while the medications help take the
8 edge off, he does still feel anxious.¹¹ Plaintiff reported his difficulty
9 with living on the streets and getting into drugs, but that he is now on
10 a suboxone program and had seen one of their counselors online once a
11 week for the past two months.¹² Plaintiff stated that he is depressed,
12 struggles with not wanting to live anymore, and that he does not do
13 much on a typical day.¹³

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15 ⁹ AR 3132–33.

16 ¹⁰ AR 3133.

17 ¹¹ AR 3133.

18 ¹² AR 3134–36.

19 ¹³ AR 3137.

1 A year later, on February 13, 2024, the ALJ issued a decision
2 denying benefits.¹⁴ The ALJ found Plaintiff's alleged symptoms were
3 not entirely consistent with the medical evidence and other evidence.¹⁵
4 The ALJ considered the lay statement from Plaintiff's mother.¹⁶ As to
5 the medical opinions, the ALJ found:

6 • the opinions of Lisa Kisenwether, ARNP, and the opinions of
7 the state agency psychological consultants (Steven Haney, MD,
8 and Michael Brown, Psych.) persuasive.

9
10 ¹⁴ AR 432–56, 3106–22. Per 20 C.F.R. §§ 404.1520(a)–(g), 416.920(a)–
11 (g), a five-step evaluation determines whether a claimant is disabled. If
12 there is medical evidence of drug or alcohol addiction, the ALJ must
13 then determine whether drug or alcohol use is a material factor
14 contributing to the disability. 42 U.S.C. § 423(d)(2)(C); 20 C.F.R. §
15 416.935; *Sousa v. Callahan*, 143 F.3d 1240, 1245 (9th Cir. 1998).

16 ¹⁵ AR 440–44. As recommended by the Ninth Circuit in *Smartt v.*
17 *Kijakazi*, the ALJ should replace the phrase “not entirely consistent”
18 with “inconsistent.” 53 F.4th 489, 499, n.2 (9th Cir. 2022).

19 ¹⁶ AR 447.

- 1 • the opinions of the initial state agency medical consultants
- 2 partially persuasive.
- 3 • the opinions of Patrick Metoyer, PhD, and Jenifer Schultz,
- 4 PhD, somewhat persuasive.
- 5 • the opinions of the Troy Bruner, PsyD, and Thomas Genthe,
- 6 PhD, not persuasive.¹⁷

7 As to the sequential disability analysis, the ALJ found:

- 8 • Plaintiff met the insured status requirements through
- 9 December 31, 2019.
- 10 • Step one: Plaintiff had not engaged in substantial gainful
- 11 activity since May 1, 2012, the alleged onset date.
- 12 • Step two: Plaintiff had the following medically determinable
- 13 severe impairments: lumbar spine disorder, osteoarthritis,
- 14 anxiety, depression, and post-traumatic stress disorder
- 15 (PTSD).

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19 ¹⁷ AR 444–47.

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- 1 • Step three: Plaintiff did not have an impairment or
2 combination of impairments that met or medically equaled the
3 severity of one of the listed impairments.
- 4 • RFC: Plaintiff had the RFC to perform medium work except:
5 He can stand and/or walk for 90 minutes at a time for
6 up to 8 hours and sit for 2 hours at a time for up to 8
7 hours. The claimant can occasionally push and/or pull
8 with his right lower extremity. He can engage in
9 frequent climbing ladders, ropes or scaffolds, ramps, or
 stairs, balancing as well as occasional stooping,
 crouching, and crawling. His work is limited to
 occasional superficial interaction with the public and
 coworkers and occasional changes in the work setting.
- 10 • Step four: Plaintiff was not capable of performing past relevant
11 work.
- 12 • Step five: considering Plaintiff's RFC, age, education, and work
13 history, Plaintiff could perform work that existed in significant
14 numbers in the national economy, such as final assembler,
15 machine packager, and laundry worker.¹⁸

18 AR 435–49.

1 Plaintiff submitted additional medical evidence to the Appeals
2 Council, which denied review.¹⁹ Plaintiff then sought review by this
3 Court.²⁰

4 **II. Standard of Review**

5 The ALJ's decision is reversed "only if it is not supported by
6 substantial evidence or is based on legal error" and such error
7 impacted the nondisability determination.²¹ Substantial evidence is
8 "more than a mere scintilla but less than a preponderance; it is such

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12¹⁹ AR 6–12, 399.

13²⁰ ECF No. 1.

14²¹ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). See 42 U.S.C. §
15 405(g); *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)),
16 *superseded on other grounds by* 20 C.F.R. § 416.920(a) (recognizing that
17 the court may not reverse an ALJ decision due to a harmless error—
18 one that "is inconsequential to the ultimate nondisability
19 determination").

1 relevant evidence as a reasonable mind might accept as adequate to
2 support a conclusion.”²²

3 **III. Analysis**

4 Plaintiff argues the Appeals Council erred at step two by not fully
5 considering the later submitted medical records, and the ALJ erred
6 when evaluating the medical opinions and Plaintiff’s symptom reports.
7 In response, the Commissioner argues that the Appeals Council
8 appropriately determined the later submitted medical evidence did not
9 affect the ALJ’s denial of disability, which was supported by
10 substantial evidence.

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12 ²² *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978,
13 980 (9th Cir. 1997)). *See also Lingenfelter v. Astrue*, 504 F.3d 1028,
14 1035 (9th Cir. 2007) (The court “must consider the entire record as a
15 whole, weighing both the evidence that supports and the evidence that
16 detracts from the Commissioner’s conclusion,” not simply the evidence
17 cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d
18 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does
19 not indicate that such evidence was not considered[.]”).

1 **A. Additional Evidence Submitted to the Appeals Council**

2 After the ALJ issued her denial, Plaintiff obtained additional
3 medical evidence and submitted it to the Appeals Council. The Appeals
4 Council decided:²³

5 You submitted medical records dated June 12, 2023 through July 12, 2023 from Tacoma
6 General Hospital (2,842 pages) and medical records dated February 20, 2024 from Lakeview
7 Rheumatology (23 pages). We find this evidence does not show a reasonable probability that
it would change the outcome of the decision. We did not exhibit this evidence.

8 You submitted medical records dated April 29, 2024 through June 4, 2024 from Confluence
9 Health (377 pages). The Administrative Law Judge decided your case through
February 13, 2024. This additional evidence does not relate to the period at issue. Therefore,
it does not affect the decision about whether you were disabled beginning on or before
February 13, 2024.

10 Plaintiff argues the Appeals Council incorrectly determined the
11 medical records submitted to the Appeals Council would not affect the
12 outcome of the ALJ's denial in February 2024.

13 The Appeals Council is required to consider new and material
14 evidence if it "relates to the period on or before the date of the [ALJ's]
15 hearing decision" and "there is a reasonable probability that the
16 additional evidence would change the outcome of the decision."²⁴

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18 ²³ AR 7.

19 ²⁴ 20 C.F.R. § 416.1470(a)(5) & (b).

1 Evidence that meets the criteria is to be considered by the Appeals
2 Council and incorporated into the administrative record as evidence,
3 “which the district court must consider when reviewing the
4 Commissioner’s final decision for substantial evidence.”²⁵ Pursuant to
5 agency policy, a copy of evidence not meeting the criteria and therefore
6 not considered by the Appeals Council is nonetheless included as part
7 of the certified administrative record filed with this Court, although by
8 law, the rejected evidence falls outside the scope of the Court’s
9 substantial-evidence review.²⁶

10 As discussed below, the Court finds the later submitted medical
11 records dated June 12, 2023, through July 12, 2023, from Takoma
12 General Hospital, and dated February 20, 2024, from Lakeview

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14 ²⁵ *Brewes v. Comm’r of Soc. Sec. Admin.*, 682 F.3d 1157, 1163 (9th Cir.
15 2012).

16 ²⁶ See Soc. Sec. Admin. Program Operations Manual System (POMs)
17 HA 01350.020, available at
18 <https://secure.ssa.gov/apps10/poms.nsf/lnx/2501350020> (addressing
19 how additional evidence is to be handled).

1 rheumatology likely would have changed the outcome of the ALJ's
2 decision, particularly at step two. In addition, the Court finds the
3 records dated April 29, 2024, through June 4, 2024, from Confluence
4 Health relate to the period at issue given that they pertain to medical
5 conditions for which Plaintiff was hospitalized in 2023, which was
6 before the ALJ's decision of February 13, 2024. Moreover, as is
7 discussed further below, the later submitted medical records directly
8 undermine the ALJ's step-two findings, which did not consider whether
9 chronic kidney disease and vasculitis were severe impairments during
10 the relevant period. Therefore, remand is necessary for the ALJ to
11 consider the complete record.

12 **B. Step Two (Severe Impairments): Plaintiff establishes
13 consequential error.**

14 The ALJ found Plaintiff had the severe impairments of lumbar
15 spine disorder, osteoarthritis, anxiety, depression, and PTSD, yet the
16 ALJ did not discuss whether Plaintiff also suffered from either chronic
17 kidney disease or vasculitis.²⁷ Plaintiff agrees that, at the time the ALJ
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19 ²⁷ AR 438.

1 issued her decision, the medical evidence of record was insufficient to
2 support a finding that chronic kidney disease and vasculitis were
3 medically determinable impairments; however, Plaintiff argues that
4 the additional medical evidence provided to the Appeals Council
5 establishes these impairments during the period in question,
6 necessitating remand. In response, the Commissioner argues that the
7 ALJ—and later the Appeals Council—appropriately did not discuss
8 whether these conditions were severe impairments because there was
9 very little evidence regarding these impairments, which were either
10 not conclusively diagnosed nor lasted for longer than 12 months.

11 1. Step-two standard

12 At step two, the ALJ determines whether the claimant suffers
13 from a severe impairment, i.e., one that significantly limits his physical
14 or mental ability to do basic work activities.²⁸ This involves a two-step
15 process: 1) determining whether the claimant has a medically
16 determinable impairment, and 2) if so, determining whether the

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²⁸ 20 C.F.R. §§ 404.1520(c), 416.920(c).

1 impairment is severe.²⁹ To be severe, the medical evidence must
2 establish that the impairment would have more than a minimal effect
3 on the claimant's ability to work.³⁰

4 Neither a claimant's statement of symptoms, nor a diagnosis, nor
5 a medical opinion sufficiently establishes the existence of an
6 impairment.³¹ Rather, "a physical or mental impairment must be
7 established by objective medical evidence from an acceptable medical
8 source."³² If the objective medical signs demonstrate the claimant has a

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12 ²⁹ *Id.* §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

13 ³⁰ *Id.* §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii); *see* Soc. Sec. Rlg. (SSR) 85-
14 28 (Titles II and XVI: Medical Impairments That Are Not Severe).

15 ³¹ *Id.* §§ 404.1521, 416.921.

16 ³² *Id.* §§ 404.1521, 416.921. *See also* SSR 85-28 at *4 ("At the second
17 step of sequential evaluation . . . medical evidence alone is evaluated in
18 order to assess the effects of the impairment(s) on ability to do basic
19 work activities.").

1 medically determinable impairment,³³ the ALJ must then determine
2 whether that impairment is severe.³⁴

3 The severity determination is discussed in terms of what is *not*
4 severe.³⁵ A medically determinable impairment is not severe if the
5 “medical evidence establishes only a slight abnormality or a
6 combination of slight abnormalities which would have no more than a
7 minimal effect on an individual’s ability to work.”³⁶ Because step two is
8 simply to screen out weak claims,³⁷ “[g]reat care should be exercised in
9 applying the not severe impairment concept.”³⁸ Step two “is not meant
10 to identify the impairments that should be taken into account when

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12 ³³ “Signs means one or more anatomical, physiological, or psychological
13 abnormalities that can be observed, apart from [a claimant’s]
14 statements (symptoms).” *Id.* §§ 404.1502(g), 416.902(l).

15 ³⁴ *See* SSR 85-28 at *3.

16 ³⁵ *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

17 ³⁶ *Id.*; *see* SSR 85-28 at *3.

18 ³⁷ *Smolen*, 80 F.3d at 1290.

19 ³⁸ SSR 85-28 at *4.

1 determining the RFC" as step two is meant *only* to screen out weak
2 claims, whereas the crafted RFC must take into account all
3 impairments, both severe and non-severe.³⁹

4 2. Analysis

5 First, contrary to the Commissioner's position that the additional
6 medical records contained insufficient evidence that chronic kidney
7 disease was a medically determinable impairment, the medical records
8 establish that chronic kidney disease (CKD) was diagnosed. Although
9 treating providers were trying to assess whether Plaintiff's significant
10 kidney challenges during his hospitalization in June and July 2023
11 were due to an acute kidney injury or chronic kidney disease, the
12 subsequent medical records reflect that medical providers did diagnose
13 Plaintiff with chronic kidney disease. For instance, the Brief Patient
14 Summary from a June 15, 2023 treatment record states:

15 [Plaintiff] is a 44 year old male with [past medical history]
16 including [chronic kidney disease 4], polysubstance abuse,
17 chronic back pain, admitted 6/12/12 with 3 weeks of
persistent and progressive pain in the low back with
radicular b/l leg pain & abdominal pain, found to have

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19 ³⁹ *Buck v. Berryhill*, 869 F.3d 1040, 1048–49 (9th Cir. 2017).

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1 [acute kidney injury] on CKD4 vs progression of CKD and
2 evidence of oral thrush.

3 A nephrology progress note from July 3, 2023, stated that Plaintiff had
4 “chronic kidney disease stage 4” and that the “underlying cause for
5 kidney disease is not clear.”⁴⁰ A week later, a medical note mentioned
6 that there was a concern for antineutrophilic cytoplasmic antibody
7 (ANCA) vasculitis.⁴¹ Dialysis began days later and continued through
8 October 2023.⁴² The medical records during this time reflect that
9 Plaintiff had edema in his lower extremities and hands, had a left foot
10 drop with decreased clearance, and generalized weakness.⁴³

11 Plaintiff was hospitalized again in October 2023 for atypical
12 bibasilar pneumonia; nephrology was consulted.⁴⁴ His physicians later

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15 ⁴⁰ AR 712.

16 ⁴¹ AR 794.

17 ⁴² AR 743–44, 3812–21.

18 ⁴³ AR 616, 2223–24, 833–38, 722–24, 780–82, 889–91, 1962.

19 ⁴⁴ AR 161, 3834.

1 questioned whether he had symptomatic vasculitis at that time.⁴⁵ In
2 February 2024, Plaintiff was seen by a rheumatologist for possible
3 ANCA-associated vasculitis, noting “problematic” numbness in his
4 hands, which had improved on the higher dose of prednisone.⁴⁶ He
5 exhibited some features of ANCA vasculitis, including peripheral
6 sensory neuropathies and foot drop, but lacked other classic features,
7 leaving the rheumatologist a “bit perplexed.”⁴⁷ He was referred to
8 physiatry for imaging, an ANCA panel, and other bloodwork.⁴⁸

9 In April 2024, Plaintiff was again admitted to the hospital,
10 experiencing weakness, swelling of his left arm and left foot, rash on
11 his left forearm and elbow, and back pain.⁴⁹ He was admitted, and the
12 medical records reflect that Plaintiff had been diagnosed with chronic

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15 ⁴⁵ AR 161.

16 ⁴⁶ AR 400.

17 ⁴⁷ AR 401.

18 ⁴⁸ AR 402.

19 ⁴⁹ AR 138.

1 kidney disease and a “history of ANCA vasculitis.”⁵⁰ Imaging revealed
2 a hemorrhage in the posterior aspect of the inferior pole left kidney,
3 which extended posterior to the left kidney into the retroperitoneum
4 adjacent to the left psoas muscle.⁵¹ In May 2024, he had follow-up
5 treatment for ANCA vasculitis.⁵² During a follow-up session, the
6 treating provider noted that Plaintiff “has a diagnosis of suspected
7 ANCA vasculitis – manifestations are not entirely clear and it is also
8 not clear if he has renal involvement.”⁵³ Plaintiff was observed with a
9 mild left foot drop, but with normal gait, and mild thenar atrophy.⁵⁴

10 Thus, while the additional medical records have varying
11 information about the presence of ANCA vasculitis, the medical records
12 clearly identify that Plaintiff suffered from chronic kidney disease, and
13 that in the summer of 2023, it was stage 4 (severe kidney damage).

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15 ⁵⁰ AR 144.

16 ⁵¹ AR 174.

17 ⁵² AR 103.

18 ⁵³ AR 60.

19 ⁵⁴ AR 57–58.

1 One treatment record preceding Plaintiff's hospital stay during the
2 summer of 2023 was from February 2022 for medication management
3 during which Plaintiff was observed with edema in the bilateral lower
4 extremities.⁵⁵ By failing to consider Plaintiff's kidney disease as an
5 impairment, there was no discussion as to whether the edema observed
6 in February 2022 was related to his chronic kidney disease.⁵⁶ This
7 error was not harmless, particularly as to the period after February
8 2022, given that the RFC allowed for medium work.

9 Moreover, Plaintiff clearly suffered from another impairment,
10 which was suspected to be vasculitis, requiring hospitalization in
11 October 2023 and April 2024. On remand, the ALJ is to develop the
12 medical record as necessary to determine whether vasculitis—or
13 another impairment—has been confirmed as the cause for these signs
14 and symptoms.

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17⁵⁵ AR 3770–76.

18⁵⁶ A January 2019 CT scan of Plaintiff's kidneys was unremarkable. AR
19 3600, 3660.

1 **C. Mental-Health Opinions: Plaintiff establishes**
2 **consequential error.**

3 Plaintiff argues the ALJ erred when evaluating the mental-
4 health opinions of Dr. Genthe, Dr. Schultz, and Dr. Metoyer. In
5 response, the Commissioner argues that the ALJ's evaluation of the
6 mental-health opinions was supported by substantial evidence—and
7 any error was harmless because the ALJ reasonably found the
8 reviewing state agency administrative opinions more supported by and
9 consistent with the record. As is explained below, the ALJ erred by not
10 considering the consistency between each of these challenged opinions
11 and by giving undue weight to "benign" mental-health findings and
12 Plaintiff's lack of continued mental-health treatment.

13 1. Standard

14 The ALJ must consider and articulate how persuasive she found
15 each medical opinion and prior administrative medical finding,
16 including whether the medical opinion or finding was consistent with

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1 and supported by the record.⁵⁷ The factors for evaluating the
2 persuasiveness of medical opinions include, but are not limited to,
3 supportability, consistency, relationship with the claimant, and
4 specialization.⁵⁸ Supportability and consistency are the most important
5 factors,⁵⁹ and the regulations define these two required factors as
6 follows:

7 (1) Supportability. The more relevant the objective medical
8 evidence and supporting explanations presented by a
9 medical source are to support his or her medical opinion(s)
10 or prior administrative medical finding(s), the more
11 persuasive the medical opinions or prior administrative
12 medical finding(s) will be.

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15 (2) Consistency. The more consistent a medical opinion(s) or
16 prior administrative medical finding(s) is with the evidence
17 from other medical sources and nonmedical sources in the
18 claim, the more persuasive the medical opinion(s) or prior
19 administrative medical finding(s) will be.⁶⁰

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1 The ALJ may, but is not required to, explain how the other listed
2 factors were considered.⁶¹ When considering the ALJ’s findings, the
3 Court is constrained to the reasons and supporting explanation offered
4 by the ALJ.⁶²

5 2. Dr. Genthe

6 In July 2021, Dr. Genthe performed a psychological evaluation of
7 Plaintiff, during which Plaintiff provided an excessive amount of detail,
8 his mood was tired, he was tangential and circumstantial, he had
9 moderate difficulties following the conversation, and he had poor
10 understanding about the factors contributing to his illness.⁶³

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12 ⁶¹ *Id.* §§ 404.1520c(b)(2), 416.920c(b)(2). When two or more medical
13 opinions or prior administrative findings “about the same issue are
14 both equally well-supported . . . and consistent with the record . . . but
15 are not exactly the same,” the ALJ is required to explain how “the
16 other most persuasive factors in paragraphs (c)(3) through (c)(5)” were
17 considered. *Id.* §§ 404.1520c(b)(3), 416.920c(b)(3).

18 ⁶² *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014).

19 ⁶³ AR 3603–10.

1 Dr. Genthe diagnosed Plaintiff with panic disorder, PTSD, and bipolar
2 I (current depressive episode) and opined that Plaintiff's "ability to
3 interact with co-workers and the public is likely moderately impaired
4 due to anxiety, PTSD, and mood symptoms and tendency to avoid
5 others"; "his ability to maintain regular attendance in the work place is
6 moderately to markedly impaired"; his "ability to understand,
7 remember, and carry out complex instructions is mild to moderately
8 impaired"; "his ability to complete a normal work day or work week
9 without interruption from anxiety, PTSD, and mood symptoms is likely
10 moderately impaired"; and "his ability to deal with the usual stress
11 encountered in the work place is moderately impaired if it involves
12 persistent activity interacting with other individuals.⁶⁴

13 The ALJ did not find Dr. Genthe's opinions persuasive because 1)
14 they are inconsistent with Plaintiff's lack of continuous mental health
15 treatment and largely benign mental status evaluations during the
16 period, 2) he did not provide a narrative statement to explain how he
17 reached his conclusions or cite any supporting evidence, and 3) they

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19 ⁶⁴ AR 3633.
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1 conflict with the reviewing state agency psychological consultants'
2 opinions, who reviewed the longitudinal record.⁶⁵

3 On this record, the ALJ's analysis contains error. First, the ALJ
4 is not to discount a claimant's reported mental health symptoms—nor
5 an examining doctor's opinions about resulting limitations—based on
6 the claimant's failure to engage in continuous mental health treatment
7 if such lack of continuous treatment may be attributable to the
8 underlying mental health condition or other good cause, such as
9 homelessness.⁶⁶ The ALJ failed to assess such here, even though
10 Plaintiff discussed challenges with homelessness, Dr. Genthe found
11 that Plaintiff's level of understanding about the factors contributing to
12 his illness was poor, and Dr. Metoyer recommended the assistance of a

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15 ⁶⁵ AR 447.

16 ⁶⁶ 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3). *Garrison v. Colvin*, 759
17 F.3d 995, 1018 n.24 (9th Cir. 2014); *Regennitter v. Comm'r of Soc. Sec.*
18 *Admin.*, 166 F.3d 1294, 1209–1300 (9th Cir. 1999); SSR 18-3p: Titles II
19 and XVI: Evaluation of Symptoms in Disability Claims.

1 payee, thereby indicating a concern about Plaintiff's reasoning and
2 judgment.⁶⁷

3 Second, the ALJ's finding that Plaintiff had largely benign
4 mental status evaluations during the period was made without the
5 medical records from Plaintiff's hospitalizations in 2023 and 2024.⁶⁸
6 While hospitalized, Plaintiff became highly distracted, required heavy
7 encouragement, screamed, and was tangential, very anxious, verbally

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9 ⁶⁷ See AR 3609, 3633; AR 3770–72 (noting that Plaintiff was not
10 currently interested in counseling even though he is feeling down and
11 depressed and that he was recently homeless with a racing mind and
12 difficulty sleeping); AR 3629 (reporting unstable housing for the past
13 five years).

14 ⁶⁸ *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984) (disallowing
15 the ALJ from cherry picking evidence to support a conclusion that
16 contradicts the overall diagnostic record); *Embrey v. Bowen*, 849 F.2d
17 418, 421–22 (9th Cir. 1988) (requiring the ALJ to identify the evidence
18 supporting the found conflict to permit the court to meaningfully
19 review the ALJ's finding).

1 abusive to staff, and very frustrated.⁶⁹ In addition, the ALJ did not
2 mention that Plaintiff had somewhat agitated body movement and a
3 restricted affect during his psychological evaluations with Dr. Schultz
4 and was observed with a mood congruent with his stated “anxious,
5 down, and depressed mood” during his psychological evaluation with
6 Dr. Metoyer.⁷⁰

7 Third, the ALJ’s decision finding that Dr. Genthe did not support
8 his opinion with either a narrative statement or supporting evidence is
9 not supported by substantial evidence. Dr. Genthe explained he based
10 his findings on his “behavioral observations made, information gained
11 during the clinical interview, and PAI profile scores.”⁷¹ As noted above,
12 Dr. Genthe noted that the amount of detail that Plaintiff provided in
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14 ⁶⁹ AR 869–70, 873, 889, 894, 1928, 57.

15 ⁷⁰ AR 3615–19, 3629–34.

16 ⁷¹ AR 3607. *See also Buck*, 869 F.3d at 1049 (Psychologist’s opinion was
17 based on a clinical interview and mental status evaluation and
18 partially relied on the claimant’s self-reports; partial reliance on self-
19 reported symptoms was not a valid reason to reject the opinion.).

1 response to questions was excessive and he was delayed in reaching a
2 point.⁷² Dr. Genthe also found that Plaintiff's insight and judgment
3 were poor to fair.⁷³ During the interview, Plaintiff reported that he
4 isolated, had no motivation, that he feels depressed, was molested as a
5 child, is cautious around older people, he had a panic attack in
6 November 2019, he has poor follow through, has a history of acting
7 without thinking first, and procrastinates.⁷⁴ Moreover, the ALJ fails to
8 explain why Dr. Genthe's observations and supporting statements were
9 less detailed than the reviewing opinions authored by Steven Haney,
10 MD, and Michael Brown, Psych., which the ALJ found persuasive
11 because they "provided a detailed assessment of the claimant's
12 condition, compete [sic] with references to the medical evidence."⁷⁵ Yet,
13 the supporting explanation and evidence cited by Dr. Haney and

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16 ⁷² AR 3608.

17 ⁷³ AR 3609.

18 ⁷⁴ AR 3604–06.

19 ⁷⁵ AR 445.

1 Dr. Brown are no more “detailed” than Dr. Genthe’s supporting
2 explanation and evidence cited.⁷⁶

3 Finally, the ALJ failed to meaningfully compare the consistency
4 between all the mental-health opinions when discounting Dr. Genthe’s
5 opinions.⁷⁷ The ALJ merely contrasted Dr. Genthe’s opinions against
6 Dr. Haney’s and Dr. Brown’s reviewing state agency opinions, without
7 considering the consistencies between Dr. Genthe’s opinions and
8 Dr. Schultz’s and Dr. Metoyer’s opinions, which are discussed in more
9 detail below. Plus, although the ALJ found Dr. Haney’s and
10 Dr. Brown’s reviewing opinions supported by their “complete access to
11 the medical evidence available at the time of their decisions,” the ALJ
12 did not discuss that Dr. Schultz had reviewed Dr. Bruner’s evaluation

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14 ⁷⁶ *Embrey*, 849 F.2d at 421-22; *Blakes v. Barnhart*, 331 F.3d 565, 569
15 (7th Cir. 2003) (“We require the ALJ to build an accurate and logical
16 bridge from the evidence to her conclusions so that we may afford the
17 claimant meaningful review of the SSA’s ultimate findings.”).

18 ⁷⁷ 20 C.F.R. §§ 404.1520c(b)(2), (c), 416.920c(b)(2), (c). *See Buck*, 869
19 F.3d at 1050; *Lingenfelter*, 504 F.3d at 1042.

1 and Dr. Metoyer had reviewed both Dr. Bruner's and Dr. Schultz's
2 evaluations. Likewise, it does not appear that the ALJ discussed that
3 Luci Carstens, PhD, PS, had reviewed Dr. Genthe's opinion, and while
4 she reduced some of the limitations from marked to significant, she
5 agreed that Plaintiff's mental-health issues impacted his functioning
6 and found that he had been impaired for at least twelve months.⁷⁸

7 In summary, the ALJ failed to provide valid reasons supported by
8 substantial evidence for finding Dr. Genthe's opinions not persuasive.

9 3. Dr. Schultz

10 In September 2020, Dr. Schultz performed a psychological
11 evaluation, including a clinical interview and a mental-status
12 examination.⁷⁹ She reviewed a psychological evaluation conducted by
13 Dr. Bruner in April 2018, which found that Plaintiff's non-exertional
14 abilities were unimpaired.⁸⁰ Dr. Schultz's mental-status observations
15 were normal, except that Plaintiff's body movements were somewhat

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17 ⁷⁸ AR 3644–45.

18 ⁷⁹ AR 3615–19.

19 ⁸⁰ AR 3616, 3581–88.

1 agitated, his stated “little anxious” mood was congruent with his
2 restricted affect, he was able to report two of three objects after a short
3 delay, and he was unable to spell “world” correctly backwards. She
4 opined that Plaintiff’s ability to finish tasks in a timely matter was
5 challenged and his social, occupational, and daily living skill
6 adaptation was poor.⁸¹

7 The ALJ found “only somewhat persuasive” Dr. Schultz’s opinions
8 because 1) “poor’ is not a vocationally relevant term that indicates how
9 often the claimant can engage in the specified activities,” and 2) “the
10 largely benign findings documented in most of the mental status
11 evaluations in the record or the claimant’s lack of consistent mental
12 health treatment during the period in question” did not support
13 Dr. Schultz’s marked limitations.⁸²

14 Again, the ALJ erred by using Plaintiff’s lack of consistent mental
15 health treatment as a basis to find Dr. Schultz’s opinions unsupported
16 without examining whether Plaintiff’s impairments or another good

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18⁸¹ AR 3618.

19⁸² AR 446.

1 cause contributed to his lack of consistent mental-health treatment. In
2 addition, the ALJ's reliance on "benign" mental-status findings must be
3 re-evaluated considering the observations during Dr. Genthe's,
4 Dr. Schultz's, and Dr. Metoyer's evaluations and the later supplied
5 medical records. Finally, Dr. Schultz's opinion that Plaintiff has "poor"
6 social, occupational, and daily living skill adaptation must be
7 considered along with Dr. Genthe's and Dr. Metoyer's observations and
8 opinions when evaluating the required consistency factor.

9 4. Dr. Metoyer

10 In July 2021, Dr. Metoyer performed a psychological evaluation,
11 including interviewing Plaintiff and a mental-status examination.⁸³
12 Dr. Metoyer reviewed Dr. Schultz's evaluation and Dr. Bruner's
13 evaluation.⁸⁴ Dr. Metoyer noted normal mental-health observations,
14 along with an affect that was congruent with his stated mood of
15 "anxious, down, depressed" and that Plaintiff was able to recall two of
16 the past three presidents, identify two out of three objects, and

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⁸³ AR 3629–34.

19⁸⁴ AR 3629–34, 3581–88, 3615–19.

1 complete three out of five digits in the reverse. Dr. Metoyer opined that
2 Plaintiff's mental health progress was guarded, that he appeared to
3 require the assistance of a payee, and that he had the following
4 limitations:

- 5 • ability to interact with others was "likely moderately
6 impaired due to anxiety, PTSD, and mood symptoms and
7 tendency to avoid others."
- 8 • "ability to maintain regular attendance in the work place is
9 moderately to markedly impaired."
- 10 • "ability to understand, remember, and carry out complex
11 instructions is mild to moderately impaired."
- 12 • "ability to complete a normal work day or work week
13 without interruption from anxiety, PTSD, and mood
14 symptoms is likely moderately impaired."
- 15 • "ability to deal with the usual stress encountered in the
16 work place is moderately impaired if it involves persistent
17 activity interacting with other individuals."⁸⁵

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19 ⁸⁵ AR 3633.
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1 As to Dr. Metoyer's evaluation, the ALJ wrote:

2 His conclusions are supported by his diagnostic findings,
3 which noted that the claimant had a depressed or anxious
4 mood as well as some difficulties with his memory and
5 recall. These limitations are consistent with similarly noted
6 difficulties in the claimant's other consultative psychological
7 exactions. However, his finding that the claimant has no
8 more than moderate limitations in any one area is
9 supported by the claimant's overall lack of consistent
10 mental health treatment. His conclusions are also
11 consistent with those of the state agency psychological
12 consultants on reconsideration, who reviewed the available
13 medical evidence and came to a similar conclusion
14 regarding the claimant's mantle [sic] abilities. However,
15 "mild" and "moderate" do not describe in vocationally
16 relevant terms how often the claimant can engage in the
17 specified activities, making Dr. Metoyer's opinion overly
18 broad, general, and of limited use in deterring the
19 claimant's mental residual functional capacity. The
undersigned therefore incorporated his opinion into the
above limitations in as much as they were consistent with
the other evidence of record.⁸⁶

20 Plaintiff accurately highlights that the ALJ erred by stating that
21 Dr. Metoyer opined that Plaintiff had "no more than moderate
22 limitations in any one area."⁸⁷ Instead, Dr. Metoyer opined that
23 Plaintiff's ability to "maintain regular attendance in the work place is

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86 AR 446.

87 ECF No. 8 at 17 (quoting AR 446).

1 moderately to markedly impaired.”⁸⁸ The Commissioner argues that
2 the ALJ’s characterization of Dr. Metoyer’s opinion is at most harmless
3 because the ALJ otherwise found the prior administrative medical
4 findings, which found no more than moderate limitations, persuasive.
5 However, the ALJ’s overall assessment of the consistency between the
6 medical opinions is impacted by the erroneous finding that Dr. Metoyer
7 had opined only moderate limitations, rather than up to a marked
8 impairment in the ability to maintain regular attendance, which is
9 more consistent with Dr. Schultz’s opinion that Plaintiff’s occupational
10 adaption was poor, and Dr. Genthe’s opinion that Plaintiff had a
11 marked limitation in being able to complete a normal workweek, than
12 with the opinions of Dr. Haney or Dr. Brown. Therefore, this error is
13 consequential.

14 Moreover, the ALJ again erred by giving undue weight to
15 Plaintiff’s “overall lack of consistent mental health treatment” without
16 considering whether such is due to his mental-health impairments or
17 other good cause.

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19 ⁸⁸ AR 446.
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1 **D. Remand: further proceedings**

2 Because of the ALJ's errors when evaluating the medical opinions
3 and the need for the ALJ to consider whether there are additional
4 severe impairments, remand for a new disability evaluation is needed,
5 and the Court need not analyze Plaintiff's additional arguments in
6 support of remand.⁸⁹

7 On remand, this matter is to be **reassigned to a new ALJ, who**
8 **is to issue a decision within 120 days of this Order.**⁹⁰ When
9 considering the later submitted medical evidence, along with any other
10 newly provided medical evidence, the ALJ is to assess whether

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12 ⁸⁹ See *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017) (specifying
13 that remand for additional proceedings is usual recourse).

14 ⁹⁰ If the ALJ finds Plaintiff not disabled and Plaintiff appeals, the
15 Commissioner's final decision shall be rendered within 60 days of the
16 appeal. See *Butts v. Barnhart*, 416 F.3d 101, 103–06 (2d Cir. 2005)
17 imposing a 120-day limit for proceedings before the ALJ and a 60-day
18 limit for administrative appeal); *see also* POMS HA 01210.055
19 (articulating agency procedures following a time-limited court remand).

1 separate RFCs (or listings findings, such as Listing 6.03) are needed for
2 varying portions of the relevant period.⁹¹ In addition, the ALJ is to
3 evaluate the reviewing opinion of Luci Carstens, PhD, PS, who
4 reviewed Dr. Genthe's opinions, which does not appear to have been
5 part of the ALJ's prior evaluation.⁹² Moreover, the Court highlights
6 that a finding of "persuasiveness" as to ARNP Kisenwether's opinion,
7 which limited Plaintiff to 4 hours of sitting and 4 hours of standing,
8 appears at odds with the modified medium-work RFC crafted by the
9 ALJ, which allowed up to 8 hours of both sitting or standing with 90
10 minute/120 minute intervals.⁹³

11 Finally, if the ALJ again discounts Plaintiff's symptoms, the ALJ
12 must articulate clear and convincing reasons for discounting Plaintiff's
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15 ⁹¹ See *Smith v. Kijakazi*, 14 F.4th 1108, 1113–16 (9th Cir. 2021).

16 ⁹² AR 3644.

17 ⁹³ AR 3624–25. Instead of finding ARNP Kisenwether's opinions
18 "persuasive," it appears the ALJ found her opinions only somewhat
19 persuasive.

1 symptoms, including identifying what symptoms are being discounted
2 and the evidence supporting the ALJ's findings.⁹⁴

3 **IV. Conclusion**

4 Plaintiff establishes the ALJ erred. The ALJ is to develop the
5 record and reevaluate—with meaningful articulation and evidentiary
6 support—the sequential process.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. The ALJ's nondisability decision is **REVERSED, and this**
9 **matter is REMANDED to the Commissioner of Social**
10 **Security for further proceedings pursuant to**
11 **sentence four of 42 U.S.C. § 405(g) before a new ALJ,**
12 **who is to issue a decision within 120 days of this**
13 **Order.**

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19 ⁹⁴ *Lingenfelter*, 504 F.3d at 1036.

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1 2. The Clerk's Office shall **TERM** the parties' briefs, **ECF**
2 **Nos. 8 and 13**, enter **JUDGMENT** in favor of **Plaintiff**,
3 and **CLOSE** the case.

4 IT IS SO ORDERED. The Clerk's Office is directed to file this
5 order and provide copies to all counsel.

6 DATED this 28th day of May 2025.

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9 EDWARD F. SHEA
10 Senior United States District Judge
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